

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ERNESTO DUGAR,
Plaintiff,
v.
DONALD H. TOOMER,
Defendant.

Case No. [13-cv-04226-WHO](#)

**ORDER ON "EX-PARTE MOTION:
PLAINTIFF DECLARATION TO THE
COURT"**

Re: Dkt. No. 16

On October 2, 2013, pro se plaintiff Ernesto Dugar filed what is styled an "Ex-Parte Motion: Plaintiff Declaration to the Court." Dkt. No. 16 ("Motion"). The Motion was set for a hearing on November 20, 2013. Because service has not been effected yet, pursuant to Civil Local Rule 7-1(b), the Court concludes that this Motion is suitable for determination on the papers, VACATES the hearing (so there will be no hearing on November 20, 2013) and DENIES the motion without prejudice to Mr. Dugar's ability to bring this motion later in accordance with the rules of the Court.

This case was filed on September 12, 2013. The docket reflects that a summons to defendant Donald H. Toomer was returned unexecuted. Dkt. No. 17. The Court cannot rule this motion, and the case cannot proceed, until the defendant has been served. The Court reminds the plaintiff that under Federal Rule of Civil Procedure 4(m), the defendant must be served within 120 days of the Complaint's filing or the case may be dismissed.

The Motion itself is defective. First, it must be served upon the defendant (who has not appeared in this case)--this is not an appropriate matter for ex parte filing. CIVIL L.R. 7-2(a), 7-10. The Motion must be served at least 35 days prior to hearing. Second, and as importantly, it does not "state with particularity the grounds for seeking the order" or "state the relief sought." FED. R.

Civ. P. 7(b). It is critical to inform the Court and opposing party why the motion is being brought and what the moving party wants the Court to do. These defects must be cured if plaintiff decides to re-file the motion at a later date.

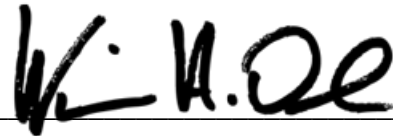
The Court advises the plaintiff to seek the assistance of the Legal Help Center to help prepare his case and to serve the defendant. Information regarding the Center is attached at the end of this Order.

The Court sets a Case Management Conference for February 4, 2014, at 2 p.m. in Courtroom 2. The parties shall file a Joint Case Management Statement on January 28, 2014.

The Clerk shall mail a copy of this Order to the plaintiff.

IT IS SO ORDERED.

Dated: November 6, 2013



WILLIAM H. ORRICK
United States District Judge

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Legal Help Center

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San Francisco, CA 94102
&
1301 Clay Street, 4th Floor, Room 470 S
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- information and help you understand the federal court processes and procedures that you need to follow;
- explanations of court orders and other paperwork;
- answers to your legal questions; and
- referrals to appropriate legal, social, and government services.

1 Help is provided **by appointment only**. To make an appointment please
2 call (415) 782-8982 or sign up in the appointment book located outside the
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3 If you do not speak English or have difficulty with English, please bring
4 someone to translate for you. We cannot provide a translator.

5 **If you seek help from the Center, you will still represent yourself. The**
6 **lawyer at the Center can not be your lawyer.**

United States District Court
Northern District of California